

INCOME TAX REFERENCE No 143 of 1983

Hon'ble MR.JUSTICE N.J.PANDYA and

Hon'ble, MR. JUSTICE S.D. PANDIT

2. To be referred to the Reporter or not? No @

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?No

5. Whether it is to be circulated to the Civil Judge? No

COMMISSIONER OF INCOME-TAX

Versus

VASANT ENGINEERING PVT. LTD.

Appearance:

MR MANISH R BHATT for Petitioner
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE S.D.PANDIT

Date of decision: 06/09/96

ORAL JUDGEMENT (Per:Pandit.J)

The questions referred to us relate to the liability under the Payment of Gratuity Act 1972 and the provision made to meet with the liability in a particular assessment year the assessment years being 1973-74 and 1974-75 to be precise.

2. In respect of both the assessment years identical questions are referred to us with the only change pertaining to the amount in question. It has to be accepted that the amount will vary from year to year. We therefore, set out the questions only pertaining to the assessment year 1973-74:

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the assessee would be entitled to an aggregate deduction of Rs. 63,018/- for the assessment year in question, since all the conditions stipulated in sec. 40(n) (7) were complied with by the assessee ?

2. Whether , on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the question of incremental liability cannot be agitated for the first time by the Income-tax Officer in the order under sec. 155(13) of the Income-tax Act 1961 ?

3. Whether, on the facts and in the circumstances of the case, the assessee is entitled to the claim of gratuity allowance to the extent of Rs. 18,155/- as allowed by the ITO or Rs. 63,018/- as granted by the Appellate Assistant Commissioner and confirmed by the Appellate Tribunal ?

4. Whether the Appellate Tribunal has been right in law in holding that the assessee who had chosen to make the provision for gratuity liability for the assessment year in question would be entitled to deduction for the entire provisions irrespective of the previous year to which the provision related, system of accounting

being mercantile ?

3. By the very nature of the accounting and especially when a statutory liability is fasten on the assessee, he has no alternative but to provide for this liability in the first available assessment year. Other conditions which has been mentioned with regard to gratuity stipulated in section 40(n)(7) are also required to be complied with. It is an accepted position that these requirements are complied with .

4. Similar questions arose before this Court which has been decided by the Division Bench of this Court as per the decision reported in 192 ITR 509. In this decision it has been clearly held that the assessee was not liable to pay gratuity till the Gratuity Act came into force but on and from the very date on which the Act came into force the liability arises for the first time and therefore, if all the conditions laid down in clause 2 of clause B to section 40(A) (n) are fulfilled the assessee company was entitled to deduction of the entire amount of gratuity provided for.

5. Once this position is appreciated and accepted in light of the the earlier decision , we would like to obviously answer question no.1 in the affirmative i.e. in favour of the assessee. This would leave question no.2 redundant and therefore, it is not answered. So far as question no.3 is concerned, it has a direct connection with the answer to question no.1. Therefore, said question no.3 is also answered in the affirmative i.e. in favour of the assessee. Similarly answer to question no.4 also will be in the affirmative.

6. Over and above the said earlier decision of the Gujarat High Court there are other decisions viz. 203 ITR 246, 209 ITR 283, 212 ITR 453 and 215 ITR 153. In fact the matter is covered by several judgments, the reasoning of which we are agreeable with and the net result therefore, is that this reference will be answered in the aforesaid manner i.e. questions nos. 1,3 and 4 in the affirmative and in favour of the assessee and question no.2 does not survive. No order as to costs.

(N.J.Pandya.J)

(S.D.Pandit.J)

